

Decision 00-06-064 June 22, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Avista Corporation U-907-G for an Order Exempting its Securities Issuance Transactions from Commission Authorization Pursuant to Sections 829 and 853 of the Public Utilities Code.

Application 00-04-011
(Filed April 4, 2000)

O P I N I O N

1. Summary

Avista Corporation (Avista) seeks exemption from the Commission's authorization for Avista's securities issuance transactions so long as such transactions are subject to regulation by other state regulatory commissions. The application is unopposed. The application is granted.

2. Background

Avista is a public utility that owns and operates property in parts of Washington, northern Idaho, southeastern Montana, northeast and southwest Oregon, and in the South Lake Tahoe region of California. Incorporated in Washington in 1889 as the Washington Water Power Company, the company changed its name to Avista Corporation on January 1, 1999.

Avista conducts generation, transmission, distribution and sale of electric energy, which it sells at retail, subject to state regulation, to more than 300,000 consumers in eastern Washington and northern Idaho. It also makes wholesale sales to public utilities, municipalities and others pursuant to authority of the Federal Energy Regulatory Commission. Avista also distributes and sells natural gas on a regulated basis to more than 200,000 residential, commercial and

industrial customers in eastern Washington, northern Idaho, central and southwest Oregon, and South Lake Tahoe, California.

Avista Communications, Inc., an affiliate of Avista, is a competitive local exchange carrier providing facilities-based telecommunications service in parts of Washington, Idaho, Oregon, Montana and Wyoming. Avista Communications of California, Inc., a wholly owned subsidiary of Avista Communications, has been authorized to offer local exchange, access and interexchange services in California but has not yet exercised its authority.¹

Avista also operates businesses that are not subject to regulation, including Avista Capital, which owns a majority share of Avista Communications.

Avista is subject to regulation by several state utility commissions. Its retail electric operations are subject to the jurisdiction of the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, and the Montana Public Service Commission. Its retail natural gas operations are subject to the jurisdiction of the Washington and Idaho commissions, the Oregon Public Utilities Commission, and this Commission.

3. Exemption Sought

Avista seeks an order exempting its securities issuance transactions from the requirement that they be authorized by this Commission.

¹ In Decision (D.) 85-11-044 and D.90-08-032, the Commission addressed issues concerning the regulation of telecommunications utilities and, on its own motion, granted exemptions from the requirements of Sections 816 through 830 and Section 851 of the Public Utilities Code to the non-dominant interexchange carriers' stocks and securities transactions and transfer or encumbrance of property.

Sections 816 through 830 of the Public Utilities Code establish this Commission's authority over stock and security transactions of public utilities.

Section 818 of the Code provides in pertinent part:

No public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidence of indebtedness payable at periods of more than 12 months after the date thereof unless, in addition to the other requirements of law it shall first have secured from the commission an order authorizing the issue....

Similarly, Sections 851 through 856 of the Code establish the Commission's authority over transfers or encumbrances of utility property, including encumbrances for the purpose of securing debt. Section 851 of the Code provides in part:

No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...line, plant, system, or other property necessary or useful in the performance of its duties to the public,...without first having secured from the commission an order authorizing it so to do.

Section 829 of the Code allows the Commission to exempt a public utility from the stocks and securities transaction provisions of Sections 816-830 upon a finding "that the application thereof to such public utility...is not necessary in the public interest." Similarly, Section 853 of the Code provides that this Commission may exempt any public utility from the transfer or encumbrance provisions of Section 851 of the Code. Avista in its application urges us to find that the public interest does not require subjecting Avista's security transactions to either the requirements of Sections 816-830 or to Section 851.

4. Discussion

The Commission has noted that the rationale for its regulation of securities transactions by regulated utilities "is to ensure that a monopoly carrier or public utility does not engage in imprudent financial transactions to the point where it is unable to provide public service to its captive customer base." (Decision (D.) 87-10-035.) The Legislature has granted this Commission the authority to exempt public utilities from these regulatory requirements in instances where the issuance of securities will not implicate the utility's ongoing ability to perform its public utility obligations.

Avista seeks an exemption on the basis that (1) its California operations are *de minimis* when compared to its total utility operations; (2) three other regulatory commissions, including those in Avista's states of primary operations, actively review and approve Avista's securities transactions, and (3) sound public policy supports preserving Commission resources by eliminating duplicative functions.

The Commission has granted exemptions pursuant to Section 829 of the Code on the basis that the California operations of a utility are *de minimis* when compared to total company operations. (Re RTC Transportation, Inc., D.84-06-032.) In D.88-04-062, the Commission exempted PacifiCorp Oregon from the provisions of the Code related to stocks and securities transactions and the encumbrance of utility property, finding that California ratepayers would provide only 2.56% of PacifiCorp's total regulated electric revenues.

Most recently, in D.00-03-049, the Commission granted Sierra Pacific Power Company an exemption from the requirements of the Code related to securities transactions. The Commission exempted Sierra Pacific, in part, on a

finding that the company's California revenues amounted to 5.3% of its total regulated utility operating revenues.

Avista is doing business in California as a public utility exclusively as WP Natural Gas, serving approximately 18,000 customers in the South Lake Tahoe area. Avista's unconsolidated statement of income for the year ended December 31, 1999, shows total regulated utility operating revenues of \$1,115,647,000. (Total operating revenues for both regulated and unregulated businesses amount to \$7,904,984,000.) Avista's utility operating revenues for its California operations amount to \$13,541,000, or 1.21% of its total utility operating revenues. Thus, Avista's revenues from its regulated California operations represent an even smaller percentage of total utility operations than those we found *de minimis* for PacifiCorp (2.56%) and Sierra Pacific (5.3%).

Avista's historical operating revenues in California compared to its total utility operating revenues are as follows:

Period Ending	Total Revenues	California Revenue	Percent
12/31/98	\$1,049,212,000	\$14,338,000	1.37%
12/31/97	891,665,000	12,862,000	1.44%
12/31/96	798,994,000	11,584,000	1.45%
12/31/95	661,216,000	11,564,000	1.75%
12/31/94	608,066,000	10,913,000	1.79%
12/31/93	601,723,000	10,800,000	1.79%
12/31/92	524,982,000	9,352,000	1.78%

The fact that Avista's regulated gas operations are subject to the scrutiny of three other state commissions provides additional grounds for an exemption. Avista is headquartered in Washington and conducts most of its regulated

business in the states of Washington, Idaho, and Oregon, where 97% of Avista's customers reside.

Revised Code of Washington Sections 80.08.10 through 80.08-160 provide for full review and regulation of Avista's securities issuances by the Washington commission. In particular, Washington Code Section 80.08.040 requires a public utility that undertakes to issue securities to file with the commission a description of the purposes for which the issuance is made, a description of the proposed issuance, including the terms of financing, and a showing of why the transaction is in the public interest.

Similarly, the Idaho commission reviews and regulates Avista's securities issuance transactions pursuant to Sections 61-901 through 61-909 of the Idaho Code. Section 61-901 restricts a public utility's ability to issue stocks and stock certificates without prior authorization by the Idaho commission.

The Oregon commission also regulates Avista's securities transactions pursuant to Sections 757.400 through 757.460 of the Oregon Revised Statutes. Section 757.410 renders void any issuance of a security by a public utility without an order of the Oregon commission authorizing the issuance.

The ongoing regulation by these other regulatory commissions effectively ensures that Avista will not engage in imprudent financial transactions that would impede its public service. This Commission came to the same conclusion in 1991 in granting Avista an exemption under Pub. Util. Code § 829 for issuance of certain securities for which Avista had already received approval from the utility commissions in Washington, Idaho, and Oregon. (D.91-12-022.) More recently, the Commission granted Avista an exemption from the Commission's Affiliate Transaction Rules based, in part, on the fact that "...[Avista] is a multi-state utility and is subject to the jurisdiction of other state regulatory commissions..." (D.99-01-015, Conclusion of Law 2.)

Granting the exemption requested by Avista will not have a negative impact on its California customers because the Commission retains full ratemaking jurisdiction in setting rates for those customers, including a review of the company's cost of capital.

5. Conclusion

For good cause shown, and pursuant to Sections 829 and 853 of the Public Utilities Code, we will exempt Avista's securities issuance transactions from the requirements of Sections 816 through 830 and Section 851 of the Code so long as such transactions are subject to regulation by other state regulatory commissions.

The authorization is limited to its specific terms and is not to be construed as indicative of full relaxation of the regulatory rights and utilities oversight obligations of this Commission.

In Resolution ALJ 176-3037, dated April 20, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in ALJ 176-3037.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of April 14, 2000.
2. Avista seeks exemption from the Commission's authorization for applicant's securities issuance transactions so long as such transactions are subject to regulation by other state regulatory commissions.

3. Avista is a public utility providing electrical service in Washington and Idaho, and natural gas service in Washington, Idaho, Oregon and in South Lake Tahoe, California.

4. Avista's affiliate, Avista Communications, Inc., provides competitive local exchange service in Washington, Idaho, Oregon, Montana and Wyoming.

5. Avista Communications of California, Inc., a wholly owned subsidiary of Avista Communications, has been authorized to offer service in California but has not yet exercised its authority.

6. Avista is doing business in California as a public utility exclusively as WP Natural Gas, serving approximately 18,000 customers in the South Lake Tahoe area.

7. Avista's utility operating revenues for its California operations amounted to 1.21% of Avista's total utility operating revenues in 1999.

8. Since 1992, Avista's utility operating revenues for its California operations have ranged between 1.21% and 1.79% of Avista's total utility operating revenue.

9. Avista is headquartered in Washington and conducts most of its regulated business in Washington, Idaho, and Oregon, where 97% of Avista's customers reside.

10. Avista's electrical operations are subject to the jurisdiction of the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, and the Montana Public Service Commission.

11. Avista's retail natural gas operations are subject to the jurisdiction of the Washington and Idaho commissions, the Oregon Public Utilities Commission, and this Commission.

12. Avista's securities issuances are subject to review and regulation by several public utility commissions, including those in Washington, Idaho, and Oregon.

Conclusions of Law

1. The proposed exemption from this Commission's authorization for Avista's securities issuance transactions is not adverse to the public interest.
2. This Commission is authorized to exempt public utilities from regulation requirements for securities transactions in instances where the issuance of securities will not implicate the utility's ongoing ability to perform its public utility obligation.
3. The Commission has granted exemptions to other companies where it was shown that the companies' California revenues were *de minimis* when compared to total company operations.
4. The application is unopposed.
5. The application should be granted to the extent set forth in the order that follows.
6. The following order should be effective on the date of signature.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, the stocks and securities transactions of Avista Corporation (Avista) are exempted from the requirements of Sections 816 through 830 of the Public Utilities Code, provided that such transactions are subject to regulation by other state regulatory commissions.
2. The transfer or encumbrance of property of Avista is exempted from the requirements of Section 851 of the Public Utilities Code whenever such transfer or encumbrance serves to secure debt exempted under Ordering Paragraph 1 above.

3. Avista shall maintain and, within 30 days from request, provide the Commission's Energy Division any or all of the statements pertaining to issuance of stocks, bonds or other evidences of indebtedness, and the purposes for which the proceeds were expended (in form and content consistent with General Order No. 24-B).

4. Application 00-04-011 is closed.

This order is effective today.

Dated June 22, 2000, at San Francisco, California.

HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners

President Loretta M. Lynch, being necessarily absent, did not participate.